40 IDELR 209

104 LRP 6716

Amanda WACHLAROWICZ, a minor,# by her parents, Jack and Grace WACHLAROWICZ, Plaintiff,# v. SCHOOL BOARD of INDEPENDENT SCHOOL DISTRICT NO. 832, MAHTOMEDI, and Cheri PIERSON YECKE, Commissioner, Minnesota Department of Education, Defendants.

Minnesota District Court

03-2437 (JNE/ JGL)

August 1, 2003

Related Index Numbers

370.075 Parties

390.013 Due Process Hearings

470.015 Complaint Procedures

470.030 Hearings and Hearing Procedures

370.070 Motions to Dismiss

Judge / Administrative Officer

Lebedoff

Case Summary

The state ED and its commissioner moved to dismiss an appeal filed by the parents of a student with dyspraxia, bilateral hearing loss, and a central auditory processing disorder from the complaint resolution procedure decision reached by the ED in the district's favor. The court concluded the broad language of the IDEA gave it subject matter jurisdiction over state complaint procedures decisions. But, because the parents had no actual or implied private right of action for complaint resolution procedure decisions, the court dismissed the ED and commissioner as to that issue. The court denied the motion to dismiss the parents' complaint that the ED failed to provide notification of the statute of limitations for due process hearings and the range of statute of limitations periods for complaint resolution procedures.

The court extended notification requirements with respect to due process hearings to state agencies. It reasoned notification was consistent with the purpose of the IDEA and complied with "the overall responsibility SEAs have with respect to procedural safeguards under the IDEA." It also determined the ED had the responsibility for providing "mandatory notification of at least a range of statutes of limitations periods, based on court decisions," for complaint resolution decisions. It concluded the ED and commissioner were not necessary parties to the due process hearing because the law generally "disfavors making state educational agencies necessary parties at the due process hearing level," and the local educational agency was the primary provider of the services for the student. But, because the issue concerned a state educational rule, the court refused to dismiss the ED and commissioner from the parents' claim that a conflict existed between state and federal law as to the student's eligibility for services.

Full Text

Appearances:

APPEARANCES:

Sonja J. Kerr, Esq., for Plaintiff Amanda Wachlarowicz

Martha J. Casserly, Esq., for Defendants Cheri Pierson Yecke and the Minnesota Department of Education

Susan E. Torgerson, Esq., for Defendant School Board of Independent School District No. 832, Mahtomedi

JONATHAN LEBEDOFF, Chief United States Magistrate Judge

The above-entitled matter came on for hearing before the undersigned Chief Magistrate Judge of District Court on June 26, 2003, on the Motion of Defendants Cheri Pierson Yecke and the Minnesota Department of Education (formerly known as the Minnesota Department of Children, Families and Learning) to Dismiss State Defendants as Parties (Doc. No. 9). The case has been referred to the undersigned for resolution of pre-trial matters pursuant to 28 U.S.C. # 636 and D. Minn. LR 72.1.

This case arises from alleged noncompliance with the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. # 1400 et. seq. Plaintiff Amanda Wachlarowitz is a 17-year-old student who suffers from dyspraxia, bilateral hearing loss, and a central auditory processing disorder. (Compl. # 3.) Hei parents filed claims against the Defendant District regarding her special education, using the administrative framework created by the IDEA, its corresponding federal regulations, and Minnesota law. Plaintiff appealed the administrative process decisions and added Cheri Pierson Yecke and the Minnesota Department of Education (collectively "State Defendants") as parties.

State Defendants filed the present motion to dismiss themselves as parties based on lack of subject matter jurisdiction (Federal Rule of Civil Procedure 12(b)(l)) and failure to state a claim upon which relief can be granted (Rule 12(b)(6)). State Defendants offer the following grounds for this motion: (1) federal courts lack jurisdiction to review a complaint, resolution procedures decision of a State educational agency; (2) State Defendants lack authority to establish a statute of limitations for federal courts; (3) State educational agencies are not required parties in administrative due process hearings under the IDEA; and (4) Minnesota Rule 3525.1331 on hearing impairment does not conflict with the IDEA. (Mem. Supp. Mot. Dismiss State Defs. Parties, at 1-2.) After providing an overview of the IDEA and its administrative framework, the Court will address each of State Defendants' grounds for dismissal in this Report and Recommendation.

I. The IDEA and its Administrative Framework

The Individuals with Disabilities Education Act ("IDEA") was established to provide a free appropriate public education with special education services for children with disabilities. 20 U.S.C. # 1400(d)(l){A). The Act specifies that the federal government is to coordinate with state and local education agencies in providing for the education of children with disabilities. *Id.* #1400(d)(l)(C).

Children with disabilities and their parents may rely on two primary types of procedural safeguards if they disagree with the local school district over how the IDEA requirements are being implemented: (1) complaint resolution procedures and (2) due process hearings. *Megan C. v. Indep. Sch. Dist. No. 625,* 57 F. Supp. 2d 776, 780-81 {D. Minn. 1999) (quoting OSEP Memorandum 94-16, 21 Individuals Disabilities Educ. L. Rep. 85 (1994); Letter to Edna Earle V. Johnson, Esq., 18 Individuals Disabilities Educ. L. Rep. 589 (1991)). Complaint resolution procedures are established under the IDEA's corresponding federal regulations at 34 C.F.R. ## 300.660 -- 300.662. These regulations provide that each state education agency ("SEA") must establish written procedures for handling "any complaint," and the agency has up to sixty days to conduct an investigation and create a written decision. *Id.* ## 300.660-300.661 (2002). Neither the IDEA nor the Minnesota statutes specifically mention the complaint resolution procedures.

The due process procedures, on the other hand, are specifically described in the IDEA. Under this arrangement, parents and children may request an impartial due process hearing, to be conducted according to state law or the SEA. 20 U.S.C. # 1415(f)(l). The IDEA creates additional safeguards with respect to due process hearings, including the right to have counsel and the right to present evidence and cross-examine witnesses. *Id.* # 1415(h). If a due process hearing is conducted by a local education agency, the decision may be appealed to the state level. *Id.* # 1415(g). Aggrieved parties may then file a civil action in state court or federal district court. *Id.* # 1415(i)(2)(A).

Due process hearings are specifically described in the Minnesota statutes, as well. Parents are entitled to an impartial due process hearing regarding the "identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability." Act of May 30, 2003, ch. 9, art. 3, # 9, 2003 Minn. Legis. Serv. (West) (to be codified at Minn. Stat. # 125A.091, subd. 12). Due process hearings are held at the district level, and hearing officer decisions may be appealed to the state appeals court or to U.S. district court. *Id.*

II. State Defendants' Motion to Dismiss State Defendants as Parties

State Defendants move to dismiss themselves as parties to this lawsuit based on lack of subject matter jurisdiction (Federal Rule of Civil Procedure 12(b)(l)) and failure to state a claim upon which relief can be granted (Rule 12(b)(6)).

Federal Rule of Civil Procedure 12(b)(l) allows a party responding to a claim to move for its dismissal for lack of subject matter jurisdiction. The motion may challenge the plaintiff's complaint either facially or factually. *See Titus v. Sullivan,* 4 F.3d 590, 593 {8th Cir. 1993) (*citing Osborn v. United States,* 918 F.2d 724, 729 n.6 (8th Cir. 1990)). In a facial challenge, the court restricts itself to the face of the pleadings and gives the non-moving party the same protections that it would receive under a 12(b)(6) motion to dismiss. *See Osborn,* 918 F.2d at 729 n.6. In a factual challenge, the court looks at matters outside the pleadings, arid the non-moving party does not have the aforementioned 12(b)(6) protections. *See id.* Here, the State Defendants present a facial challenge to subject matter jurisdiction.

Federal Rule of Civil Procedure 12(b)(6) allows a party responding to a claim to move for its dismissal if it fails to state a claim upon which relief can be granted. A complaint should not be dismissed "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957). The facts alleged in the complaint "must be liberally construed in the light most favorable to the plaintiff." *Coleman v. Watt,* 40 F.3d 255, 258 (8th Cir. 1994) (*citing Fusco v. Xerox Corp.,* 676 F.2d 332, 334 (8th Cir. 1982)).

Generally, a court may not consider matters outside the pleadings on a Rule 12(b)(6) motion to dismiss. If matters outside the pleadings are submitted and not excluded by the Court, the motion must be converted into a motion for summary judgment. *See Hamm v. Rhone-Poulenc Rorer Pharm., Inc.,* 187 F.3d 941, 948 (8th Cir. 1999) (citing Fed. R. Civ. P. 12(b)(6)).

State Defendants offer the following grounds for this motion: (1) federal courts lack jurisdiction to review a complaint resolution procedures decision of a State educational agency; (2) State Defendants lack authority to establish a statute of limitations for federal courts; (3) State educational agencies are not required parties in administrative due process hearings under the IDEA; and (4) Minnesota Rule 3525.1331 on hearing impairment does not conflict with the IDEA. (Mem. Supp. Mot. Dismiss State Defs. Parties, at 1 -2.) The Court will now address each of State Defendants' grounds for dismissal.

A. Subject Matter Jurisdiction Over Complaint Resolution Procedures Decisions

Plaintiff, in her complaint, appeals the complaint resolution procedures decision reached by the Minnesota Department of Education and requests the court to find the Department a proper party to this lawsuit. (Compl. # 23 & Prayer for Relief ## 1, 3.) State Defendants argue that they should be dismissed as parties to this action because federal courts lack subject matter jurisdiction over complaint resolution procedures decisions The Court disagrees with respect to jurisdiction but agrees, on separate grounds, that State Defendants should be dismissed as a party to Plaintiffs' claims regarding complaint resolution procedures decisions.

The Court must first determine whether it has subject matter jurisdiction with respect to complaint resolution procedures decisions. The IDEA statute states that federal district courts have "jurisdiction of actions brought under this section." 20 U.S.C. # 1415(i)(3)(A). In a recent decision , the federal district court for the Eastern District of Virginia held that it had subject matter jurisdiction under the IDEA with respect to plaintiffs' complaint resolution procedures claim. *See Va. Office of Prot. & Advocacy v. Virginia,* No. CIV.3:03CV026, 2003 21137736 (E.D. Va. May 16, 2003). The Virginia Office court concluded that the words "this section" in 20 U.S.C. # 1415(i)(3)(A) are broad and encompass any action within the scope of the IDEA. *See id.* This Court, finds the Virginia Office decision persuasive with respect to this issue and concludes that the Court should have subject master jurisdiction over complaint resolution procedures decisions.

Although this Court may have subject matter jurisdiction, the Plaintiff may not necessarily have a private right of action with respect to complaint resolution procedures decisions. Case precedent shows conflicting views among courts about whether such a private right of action exists. *See Beth V. v. Carroll,* 87 F.3d 80, 88 (3rd Cir. 1996) (holding that plaintiffs had an express right of action with respect to complaint resolution procedures decisions). But *see Va. Office,* 2003 WL 21137736 (holding that no private right of action exists because the complaint resolution process is less formal and less adversarial than the due process hearing procedures, and the IDEA specifically includes a right to appeal from a due process hearing decision); *Wolfe v. Lower Merion Sch. Dist.,* 801 A.2d 639, 643 (Pa. 2002) (holding that the court could not hear the matter because no right of appeal exists with respect to the outcome of complaint resolution procedures); *see also Megan.C.,* 57 F. Supp. 2d at 785 (holding that a complaint brought under complaint resolution procedures is not an "action or proceeding" for purposes of IDEA's attorneys fees provision). Because case precedent is conflicting with respect to finding a private right of action, the Court must now determine whether a private right of action is appropriate based on the facts of this case.

The Court finds the Virginia Office approach persuasive in determining whether a private right of action exists here. The Virginia Office court compared due process hearing procedures to complaint resolution procedures and found the former more formal and adversarial. *Va. Office* 2003 WL 21137736. A crucial distinction is that the IDEA expressly provides a right to appeal and a right to bring a civil action for due process decisions only; the statute does not mention the availability of these safeguards for complaint resolution procedures decisions. *See* 20 U.S.C. # 1415(i)(2); *Va. Office* 2003 WL 21137736. If Congress had intended to create a private right of action for complaint resolution procedures decisions, it could have inserted the relevant language in the statute. It cannot be assumed that a private right of action exists for a complaint resolution procedures decision when the statute expressly provides a right of action for due process hearing decisions only. *See Va. Office* 2003 WL 21137736, n.4 ("[W]here the IDEA fails to state a private right of action with clarity, none should be assumed by the courts."). Therefore, this Court finds that no express private right of action exists with respect to complaint resolution procedures decisions.

The *Beth V. case* is distinguishable from the current case and should not be followed here. In *Beth V.,* plaintiffs made claims of state-wide deficiencies in the complaint resolution procedures as a whole, *Beth V.,* 87 F.3d at 83. Furthermore, the plaintiffs' claims under the complaint resolution procedures never resulted in a decision. Id., In the current case, however, Plaintiff Amanda is alleging deficiencies with respect to her personal claim, and the complaint resolution procedures did result in a decision, (Compl. # 10) Therefore, based on the factual distinctions between *Beth V.* and the current case, *Beth V.* is not applicable to this situation,

Plaintiff and her parents also argue that an implied private right of actions exists for complaint resolution procedures decisions. (Pl.'s Supplemental Br. Regarding Additional Authority at 5-8.) The Court disagrees. The following four-part test applies in determining whether an implied private right of action exists: (1) whether the plaintiff is a member of the class for whose benefit the statute was enacted;

(2) whether any legislative intent exists that would either support or negate the implied private right of action; (3) whether the implied right is consistent with the purpose of the underlying legislative framework; and (4) whether the cause of action is in an area traditionally handled under state law. *Redd v. Fed. Land Bank of St. Louis,* 851 F.2d 219, 221 (8th Cir. 1988) (*citing Cort v. Ash.,* 422 U.S. 66, 78 (1975)).

Applying the elements of this test in the order described above, the Court finds that no implied private right of action exists. Plaintiff meets the first element because the IDEA was designed to benefit children with disabilities, 20 U.S.C. # 1400(d)(l)(A), and Plaintiff Amanda fits within this class. Plaintiff, however, has not shown that the relevant legislative history supports an implied private right of action. Plaintiff has not provided the Court with any legislative history related to this specific issue. The Court, through its own research, has found no indication of legislative intent supporting an implied private right of action with respect to complaint resolution procedures decisions. The Court notes that in the Department of Education's comments to its corresponding federal regulations, the agency rejected the notion of having Secretarial review of complaint procedures decisions. *See* Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers with Disabilities, 64 Fed. Reg. 12406, 12646 (Mar. 12, 1999) (to be codified at 34 C.F.R. pts. 300 & 303) (noting the unsuitability of having the agency review factual disputes in individual cases). The agency was also concerned about the length of the litigation process. *Id.* ("The existence of the Secretarial review process may falsely encourage parents to delay taking an issue to mediation or due process so that their case is not timely filed."), Even though the agency was commenting on its own possible review of complaint procedures decisions, the same concerns could be applied to judicial review. Therefore, the Court concludes that relevant legislative history does not support an implied private right of action with respect to complaint resolution procedures decisions. Because Plaintiff has not established the second element of the test, the Court need not address the third and fourth elements of the four-part test.

Given this Court's recommendation that no private right of action exists, the Court is concerned about the ability of children and parents like those of Plaintiff Amanda and her parents who want to air their grievances regarding complaint resolution decisions. One possibility is to appeal to the state court of appeals via a writ of certiorari. *Township of Honner v. Redwood County,* 518 N.W.2d 639, 641 (Minn. Ct. App. 1994) (*citing In re Haymes,* 444 N.W.2d 257, 259 (Minn. 1989) (stating that a common law right to judicial review of an agency's decision exists when the corresponding statute is silent). Another possibility is to air grievances through due process hearings, which Plaintiff Amanda did in this case. Because other possibilities do exist for children and parents to seek remedies for IDEA violations, the Court concludes that not finding a private right of action regarding complaint resolution procedures decisions is proper and does not close off these individuals' ability to obtain relief.

Based on the above discussion, the Court concludes that State Defendants' motion to dismiss pursuant to lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(l) should be denied. The Court also concludes, however, that State Defendants should be dismissed as a party to Plaintiffs claims regarding complaint resolution procedures decisions.

B. Authority to Establish and Responsibility to Communicate Statute of Limitations

Plaintiff, in her complaint, argues that the Department of Education neither established nor communicated a statute of limitations for due process hearings and complaint resolution procedures decisions. (Compl. ## 8-9.) State Defendants' second ground for dismissal is that they lack authority to establish a statute of limitations with respect to both complaint resolution procedures and due process hearings. State Defendants also claim they do not have the responsibility to inform parents and children of the relevant statute of limitations. The Court disagrees.

The Court will address the statute of limitations for due process hearings first. The IDEA and its corresponding federal regulations do not specify a statute of limitations. Minnesota law gives parents sixty days to appeal a due process hearing decision to the state court of appeals. Act of May 30, 2003, ch. 9, art. 3, # 9, 2003 Minn. Legis. Serv. (West) (to be codified at Minn. Stat. # 125A.091, subd. 24). The state statute does not specify, however, how much time parents have to appeal to federal district court. It also does not specify when parents must initially file a request for a due process hearing. Furthermore, the statute does not mention responsibility of informing parents about the relevant statute of limitations. Because statutory law contains few answers to the issues raised here, the Court must next look at case law.

Eighth Circuit case law is varied on the length of time for a statute of limitations with respect to due process hearings. *See, e.g.. Birmingham v. Omaha Sch. Dist.,* 220 F.3d 850, 856 (8th Cir. 2000) (recommending three-year statute of limitations); *Strawn v. Mo. State Bd. of Educ.,* 210 F.3d 954 , 957-58 (8th Cir. 2000) (two years); *Reinholdson v. Minnesota,* No. CIV. 02-T95 ADM/AJB, 2002 WL 31026580 (D. Minn. Sept 9, 2002) (six years). Although these Eighth Circuit cases show recommended statute of limitations periods, they do not discuss responsibility for communicating these time limits to parents. Therefore, this Court must look beyond Eighth Circuit precedent for guidance.

A recent decision in the Eastern District of Virginia makes clear that some form of notification is required. In *R.R. v. Fairfax County Sch. Bd.,* the court held that a county school board was responsible for communicating Virginia's two-year statute of limitations period. 226 F. Supp. 2d 804, 808 (E.D. Va. 2002). Notification is consistent with the purposes of the IDEA. *See id,* at 809 ("Not to warn parents clearly of the potential to lose their right to administrative review is completely contrary to the spirit of the IDEA,"). This Court finds the *R.R.* decision persuasive and concludes that notification to parents is required. State Defendants may argue that even if notification should be required, it is the local school district's responsibility, not the SEA's responsibility, thus making the State Defendants unnecessary parties to this action. This rationale, however, would be contrary to the spirit of the IDEA and ignores the overall responsibility SEAs have with respect to procedural safeguards under the IDEA. *See* 20 U.S.C. # 1415(a) ("Any State educational agency ... shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards ... ."); *id.* # 1415(d) (requiring distribution of procedural safeguards to parents). Therefore, notification requirements with respect to due process hearings should extend to State agencies.

Similar notification requirements should exist regarding complaint resolution procedures. Although the IDEA is silent with respect to complaint resolution procedures, its corresponding federal regulations indicate a one-year statute of limitations period. *See* 34 C.F.R. # 300.662(c) (2002). The federal regulations also require notification of the "timelines" under complaint resolution procedures. *See id,* # 300.504(b){14). This Court interprets "timelines" to include a statute of limitations period. Although the Court found no relevant case law in this area, it concludes based on the federal regulations that this aspect of State Defendants' motion to dismiss should be denied.

The Court concludes that State Defendants' motion to dismiss pursuant to 12(b)(6) should be denied with respect to both due process hearings and complaint resolution procedures. Although it is not clear what the precise statute of limitations period is in Minnesota for due process hearings, this Court interprets the *R.R.* decision as making a persuasive case for mandatory notification of at least a range of statute of limitations periods, based on court decisions. The Court does note that Plaintiff Amanda was represented by counsel at the time her parents requested a due process hearing (May 1, 2002) and also when her parents were notified of a two-year statute of limitations period (May 21, 2002) (Compl. Ex. B at 1, Ex. D # 5.) Therefore, it is doubtful that Plaintiff's parents should have been surprised upon learning about the statute of limitations period. Regardless, given the procedural posture of this case, it is appropriate to allow Plaintiffs claim to go forward. This is a 12(b)(6) motion, not a summary judgment motion, and Plaintiff Amanda and her parents have met their burden of showing a proper claim. This aspect of State Defendants' motion to dismiss should be denied.

C. State Educational Agencies as Required Parties in Administrative Due Process Hearings Under IDEA

State Defendants argue that they should be dismissed as parties to this action because they are not proper parties to due process hearings. State Defendants offer two grounds for this argument: (1) due process hearing officers cannot adjudicate the validity of a state rule; and (2) hearing officers lack authority to add State Defendants as parties to due process hearings. The Court agrees with both of these grounds.

A review of the facts pled in the Complaint encompassing this portion of State Defendants' motion is necessary before proceeding further. Upon learning that Plaintiff Amanda did not qualify as "hearing impaired" under Minnesota Rule 3525.1331, Plaintiffs parents sought to challenge the validity of this rule at the due process hearing stage under the theory that the Minnesota rule conflicts with the IDEA. (Compl. # 19.) Plaintiffs parents also sought to bring in State Defendants as parties to the due process hearings under the theory that State Defendants must be present to defend the validity of the state rule at issue. (Compl. Ex. E at 28-30.) Both the initial and the reviewing due process officers rejected the parents' proposal. (Compl. # 21.) Plaintiffs parents now seek court review of this issue, as well as a court order to amend the Minnesota statutes so that they permit joining the state education agency at the due process hearing level. (Compl. Prayer for Relief # 6.)

Due process hearing officers do not have explicit authority to adjudicate the validity of a state law. The IDEA's procedural safeguards give parents wide latitude as to the subject matter of their complaints. 20 U.S.C. # 1415(b)(6) ("[Procedural safeguards include] an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or education placement of the child, or the provision of a free public education to such child."). The IDEA also states, however, that due process hearings are to be conducted "by the State educational agency or by the local education agency, as determined by State law or by the State educational agency." 20 U.S.C. # 1415(f)(l). Therefore, despite the broad range of issues parents can file complaints about, the IDEA gives responsibility for handling due process procedures to the states.

Minnesota law describes the responsibilities of due process hearing officers. These officers have the authority to make decisions "involving identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability." Act of May 30, 2003, ch. 9, article 3, # 9, 2003 Minn. Legis. Serv. (West) (to be codified at Minn. Stat. # 125A.091, subd. 18). Because this statute does not specify whether hearing officers have authority to adjudicate the validity of a state rule, and because it is unclear whether this can be inferred from the statute's text, the Court will turn to relevant case law for guidance.

Case law generally supports limited responsibilities for due process hearing officers. One court invalidated a hearing officer's supplementary orders directing the local school district to implement remedial administrative procedures. *See State-Unified Sch. Dist. No. 1 v. State Dept. of Educ.*, 695 A,2d 1077, 1083 (Conn. Super. Ct. 1997) ("[Authority of a hearing officer ... is limited to issuing orders that pertain to the special education needs of the child who was the subject of the hearing."). Other courts have stated that hearing officers have certain limits on their authority. *See Bray v. Hobart City Sch Corp.*, 818 F. Supp. 1226, 1233 (N.D. Ind. 1993) (stating that the hearing officer does not have the ability to adjudicate on the validity of the application review procedure, nor does the officer have the authority to determine whether conduct violates the IDEA). Therefore, this Court concludes that due process hearing officers have limited responsibility, and they do not have the authority to determine the validity of state rules.

Even if hearing officers could adjudicate on state rules, the State Defendants may not necessarily be required parties at the due process level. This Court will first address statutory law in this area and then summarize relevant case precedent. As previously stated, the federal government delegates responsibility for conducting due process hearings to state or local educational agencies. 20 U.S.C. # 1415(f)(l). The IDEA does not state, however, whether due process hearing officers may join state educational agencies as parties to the hearings. Minnesota law states that a "parent or a district" may request a due process hearing, which must be held in the responsible district. Act of May 30, 2003, ch. 9, article 3, # 9, 2003 Minn. Legis. Serv. (West) (to be codified at Minn. Stat. # 125A.091, subd. 12). Hearing officers have authority to join districts in the proceedings, and parents or the district may appeal the hearing officer's decision. *Id.* These state statutory provisions imply a significant role for local school districts, but not state educational agencies, during due process hearings.

Courts have ruled that state educational agencies may not be joined as parties to due process hearings under certain circumstances. *See Johnson v. Indep. Sen. Dist. No. 4,* 921 F.2d 1022, 1031 (10th Cir. 1990) (holding that the state educational agency was not a required party because state law designated due process hearing responsibility to the local school district); *S.C. v. Deptford Township Bd. of Educ.*, 213 F. Supp. 2d 452, 457 (D. N.J. 2002) (*citing L.P. v. Edison Bd. of Educ.*, 626 A.2d 473 (N.J. Super. Cl. Law Div. 1993)) (stating that state agencies cannot be joined as parties to due process hearings unless the agency is directly providing educational services); *Barbara Z. v. Obradovich,* 937 F. Supp, 710, 719 (N.D. Ill. 1996) (stating that due process hearing officers lack authority to join state agencies as parties at the administrative level); *Glazier v. Indep. Sen. Dist. No. 876,* 558 N.W.2d 763, 769 (Minn. Ct. App. 1997) (holding that state educational agency was not & necessary party to an appeal from a due process hearing decision). Therefore, case law generally disfavors making state educational agencies necessary parties at the due process hearing level

Based on the statutory provisions and case law discussed above, this Court concludes that state educational agencies are generally not required parties at the due process level. The State Defendants here are not necessary parties to the due process hearings, Minnesota law provides a more significant role to local school districts, and there is no evidence that State Defendants, rather than the local school district, were the primary provider of educational services for Plaintiff Amanda. Therefore, the Court recommends that State Defendants' motion to dismiss be granted with respect to State Defendants being parties at the due process hearing level. The Court also recommends dismissal of Plaintiffs request that the Minnesota statutes be amended to allow joinder of the state educational agency at due process hearings.

D. Possible Conflict Between Minnesota Rule 3525.1331 and the IDEA

State Defendants' final ground for dismissal is that Plaintiff Amanda and her parents fail to state a claim by alleging a conflict between Minnesota Rule 3525.1331 and the IDEA. State Defendants further allege that they are not required parties with respect to this issue. The Court disagrees with both arguments.

Again, a review of the facts is necessary before proceeding further. At issue here is whether Plaintiff Amanda is qualified as "hearing impaired" under both the IDEA and the Minnesota rule, and also whether a

(6th Cir. 1996); *Sarah M. v. Weast,* 111 F. Supp, 2d 695, 703-04 (D. Md. 2000); *Converse County Sch. Dist. No. Two v. Pratt,* 993 F. Supp. 848, 856-57 (D. Wyo. 1997). Therefore, the Court concludes that it has jurisdiction over Plaintiff's claim.

This federal court is an appropriate forum to handle Plaintiff's claim. State Defendants argue that this claim, would more appropriately be heard in state court. A party may request that the state court of appeals determine the validity of a state rule. Minn. Stat. # 14.44. State Defendants further cite to *Johansson v. Bd. of Animal Health,* 601 F. Supp. 1018, 1021 (D. Minn. 1985) (absent a constitutional violation, court cannot act as a "superlegislature" by "reviewing the wisdom of legislative and administrative measures"). This argument, however, ignores that several federal courts have already handled cases involving conflicts between the IDEA and state rules, as discussed above. Furthermore, Plaintiff's claim contains a federal law component, namely the IDEA. State Defendant's argument would be more persuasive if this federal court was imposing its jurisdiction over a purely state law matter. This is not the case, however, so this federal court is an appropriate forum for Plaintiffs claim.

The next issue to address is whether a conflict exists between Minnesota Rule 3525.1331 and the IDEA. Arguments can be made for both sides. On the one hand, a conflict may exist because these two different laws yield two different outcomes. Plaintiff Amanda may be eligible under the IDEA but not eligible under the state rule. The Court notes that upon closer review the specific issue is not whether Plaintiff Amanda is "hearing impaired" under the IDEA and the state rule. The Plaintiff appears to meet the definition of "hearing impaired" under both laws. The problem for Amanda is that although she is hearing impaired, she is not eligible for special, education services under the Minnesota rule, as determined by audiological tests required by the rule. The federal statute and regulations do not have this additional hurdle, so Plaintiff Amanda appears to qualify under federal law. Therefore, there is arguably a conflict here. Furthermore, the IDEA's purpose of providing an appropriate free education to disabled children may be thwarted by the Minnesota rule; perhaps it is overly restrictive. The contrary argument is that no conflict exists because the federal statute and regulations are much broader than the state rule. Under this approach, a conflict would exist if the IDEA and federal regulations each had their own audiological thresholds that were different from the state rule thresholds. Furthermore, the federal statute and regulations defer to the states for determination of eligibility. Thus, there would be arguably no conflict here. The Court recognizes that both positions are valid. Because this is a Rule 12(b)(6) motion, the Court concludes that Plaintiffs claim is valid at this point. The resolution of a difficult issue such as this one could be more appropriately resolved at the summary judgment stage.

The final issue to address is whether State Defendants should be parties to Plaintiff's claim. Although the IDEA does not squarely address this matter, it does assign to the states the overall responsibility of providing a free appropriate education to children with disabilities. 20 U.S.C. # 1412(a)(l). Furthermore, several courts have determined that state educational agencies may be responsible parties in IDEA cases. *See Ullmo v. Gilmour Acad.,* 273 F.3d 671, 679 (5th Cir. 2001) (*quoting St. Tammany Parish Sch. Bd. v. Louisiana,* 142 F.3d 776, 784 (5th Cir. 1998)); *Gadsby v. Grasmick,* 109 F.3d 940, 953 (4th Cir. 1997); *Moubry v. Independent Sch. Dist. No. 696,* 951 F. Supp. 867, 891-92 (D. Minn. 1996); *Hill v. Laurel Sch. Dist.,* 22 Individuals Disabilities Educ, L. Rep. 489 (S.D. Miss. 1995). On the other hand, courts have been wary of assigning "respondeat superior"-type liability to state educational agencies for the local school district's errors. *See Carnwath v. Grasmick,* 115 F. Supp. 2d 577, 582 (D. Md. 2000). Based on this background of statutory law and case precedent, however, this Court concludes that this State Defendants may be appropriately named as parties with respect to Plaintiff's claim. State educational agencies bear an conflict exists between these authorities with respect to their definitions of "hearing impaired." The IDEA provides benefits for children with disabilities. 20 U.S.C. # 1411(a)(l). The statute defines "child with disability" as including children with hearing impairments who need special education. *Id,* # 1401(3)(A). The federal regulations define "hearing impairment" as "an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section." 34 C.F.R. # 300.7(c)(5)(2002). Plaintiff and her parents claim that Amanda is "hearing impaired" under federal law, and they also argue that the Minnesota rule is invalid. (Compl. Prayer for Relief # 4.)

Plaintiff Amanda may not necessarily qualify as "hearing impaired" and needing special education services under state law, however. The federal regulations allow states to determine whether a child is eligible as a "child with a disability" for IDEA purposes. *Id.* # 300.530, # 300.532(b)(l). The Minnesota statutes define "child with a disability" as including children with hearing impairments who need special instruction and services, "as determined by the standards of the commissioner." Minn. Stat. # 125A.02, subd. 1. According to the Minnesota statutes, "the commissioner must adopt rules relative to qualifications of ... pupil eligibility ... and other necessary rules for instruction of children with a disability." *Id.* # 125A.07(a). Furthermore, "[t]he commissioner must adopt rules to determine eligibility for special education services," *Id.*

The Minnesota rules define "deaf and hard of hearing" to mean aa diminished sensitivity to sound, or hearing loss, that is expressed in terms of standard audiological measures." Minn. R. 3525.1331. The rules define "hearing loss" as "ha(ving) the potential to affect educational, communicative, or social functioning that may result in the need for special education instruction and related services." *Id.* Furthermore, the rules require "hard of hearing" pupils to meet certain criteria to be eligible for special education. *Id.* First, the pupil must provide audiological evidence from a certified audiologist that the pupil has a hearing loss exceeding certain decibel hearing levels. *Id.* Second, the pupil must demonstrate that the hearing loss affects either educational performance, use or understanding of spoken English, or adaptive behavior. *Id.* Plaintiff Amanda did not meet the audiological threshold under the first test, (Compl. # 15.) Therefore, she was not qualified for special educational services under the Minnesota rules. (Compl. Ex. C at 4.) Plaintiff and her parents claim that a conflict exists between the IDEA and the Minnesota rule under the theory that she would be considered "hearing impaired" under the federal statute but not under the Minnesota rule. (Compl. Prayer for Relief # 4.) Due process hearing officers declined to address this issue, so Plaintiff and her parents ask the Court to determine the validity cf the Minnesota rule, with the State Defendants as additional parties to this action.

There are four primary issues to address with respect to the alleged conflict between Minnesota Rule 3525.1331 and the IDEA: (1) whether this Court has subject matter jurisdiction; (2) whether a federal court, rather than a state court, is a proper forum for handling this dispute; (3) whether a conflict exists between the state rule and federal statute; and (4) whether the State Defendants should be parties to this action. The Court will address subject matter jurisdiction first.

This Court has subject matter jurisdiction to handle Plaintiffs claim. The IDEA states that federal district courts have "jurisdiction of actions brought under this section." 20 U.S.C. # 1415(i)(3)(A). As previously stated, this statutory language can be interpreted broadly. The IDEA specifically mentions due process hearings and the federal regulations define "hearing impaired," which are the subjects of this particular dispute. Furthermore, other federal courts have handled cases regarding conflicts between the IDEA and state law. *See Weiss v. Sch. Bd. of Hillsborough County,* 141 F.3d 990, 996 (11th Cir. 1998); *Wise v. Ohio Dept. of Educ.,* 80 F.3d 177, 183 overall responsibility to provide educational services, and it would be unreasonable at this point to dismiss Plaintiff's claim that deals with a state, not local, educational rule. The Court concludes that State Defendants' motion to dismiss regarding Plaintiff's Minnesota Rule 3525.1331 claim should be denied.

III. Recommendation

State Defendants' Motion to Dismiss State Defendants as Parties should be denied as to Plaintiff's claim of State Defendants' responsibility to communicate statute of limitations information to parents and children. The motion should also be denied as to Plaintiff's claim of alleged conflict between Minnesota Rule 3525.1331 and the IDEA. The motion should be granted es to Plaintiff's claims regarding complaint resolution procedures decisions and her claim that State Defendants should have been parties at the due process hearing level.

Based upon the foregoing, and all the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED:

(1) State Defendants' Motion to Dismiss State Defendants as Parties (Doc. No. 9) should be GRANTED IN PART and DENIED IN PART, as set forth fully in the body of this Report and Recommendation.

Statutes Cited

20 USC 1400(d)(1)(A)
20 USC 1400(d)(1)(C)
20 USC 1415(f)(1)
20 USC 1415(h)
20 USC 1415(g)
20 USC 1415(i)(2)(A)
20 USC 1415(i)(3)(A)
20 USC 1415(i)(2)
20 USC 1415(a)
20 USC 1415(d)
20 USC 1415(b)(6)
20 USC 1411(a)(1)
20 USC 1401(3)(A)
20 USC 1412(a)(1)

Regulations Cited

34 CFR 300.660-300.662
34 CFR 300.660-300.661
34 CFR 300.662(c)
34 CFR 300.504(b)(14)
34 CFR 300.7(c)(5)
34 CFR 300.530
34 CFR 300.532(b)(1)

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